IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

CRP.No. 897 of 2002

O.S.163/1993 OF MUNSIFF'S COURT, PARAPPANANGADI
I.A.1650/1997 IN AS.127/1997 of SUB COURT, TIRUR

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REVN. PETITIONERS: PETITIONERS/APPELLANTS/DEFENDANTS:

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1. THE DISTRICT COLLECTOR, MALAPPURAM.

2. DISTRICT PROJECT OFFICER,
INDIA POPULATION PROJECT,NO.3 MANJERI.

3. MEDICAL OFFICER IN-CHARGE,
HEALTH SUB CENTRE, INDIA POPULATION PROJECT,
VELIMUKKU.

4. DISTRICT MEDICAL OFFICER, MALAPPURAM.

BY GOVERNMENT PLEADER SRI LAKSHMI NARAYANAN

RESPONDENT: RESPONDENT/RESPONDENT/PLAINTIFF:

ERANHIKKAL KUNHAHAMMED'S SON
MOIDEENKUTTY BY POWER OF ATTORNEY V.SAINABHA,
AGED 41 YEARS, THIRURANGADI AMSOM, KAKKAD DESOM,
TIRUR TALUK.

BY ADV. SRI.K.P.DANDAPANI

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

HARUN-UL-RASHID, J.

C.R.P. No. 897 of 2002

Dated, this the 22nd day of August, 2007

ORDER

The petitioners herein are the defendants in O.S.No.163/1993 on the file of the Munsiff's Court, Parappanangadi. The suit was filed by the respondent herein for recovery of possession of the plaint schedule property on the strength of title and for a mandatory injunction to demolish the structure alleged to have been put up by the defendants in the property unauthorisedly. By the decree and judgment dated 6.1.1996 the Munsiff's Court, Parappanangadi decreed the suit as prayed for. The decree directed the defendants to demolish the building constructed in the plaint schedule property. In case the defendants are not complying with the order, the plaintiff is permitted to demolish it and he is entitled to a sum of Rs.200/- as costs from the defendants. On going through the judgment of the Munsiff's Court, it is seen that the defendants did not adduce any evidence or examined anyone on their side. The defendants filed A.S.No.127/1997 before the Sub Court, Tirur challenging the decree and judgment passed against them. The appeal was filed along with a petition for condonation of delay of 511 days in filing the appeal. The first appellate court dismissed the delay condonation petition on 31.3.1998 and consequently the appeal was also dismissed. The Sub Court, Tirur found that there is no satisfactory explanation for the delay of 511 days in filing the appeal. The defendants filed Second Appeal No.918/2000 before the High Court challenging the appellate order on the question of delay and the consequential dismissal of

the appeal. The second appeal also was not filed in time, but filed after the period with a petition for condonation of delay of 254 days in filing the second appeal. When the second appeal came up for hearing, this court noticed the fact that the course open to the appellants/defendants is to file a civil revision petition and not the second appeal. Therefore, this court directed the appellants to file a civil revision petition challenging the first appellate order passed by the Sub Court, Tirur. Consequently Civil Revision Petition No.892/2002 was filed by the defendants. There is a delay of 1408 days in filing the C.R.P. This court taking a very liberal view condoned the delay in filing the C.R.P.

2. The question to be decided in this C.R.P. is as to whether the order dated 31.3.1998 passed by the Sub Court, Tirur in I.A.No.1650/1997 in A.S.No.127/1997 is liable for interference under sec.115 of the Code of Civil Procedure. The Sub Court, Tirur dismissed the delay petition finding that there is no proper or sufficient explanation for the delay of 511 days in filing the appeal. The only reason stated in the affidavit in support of the delay petition is that there was a compromise talk held between the parties and, therefore, they could not file the appeal in time. The Appellate Court examined the evidence adduced by the parties in support of the delay petition and held that there is no satisfactory and reliable evidence that the revision petitioners have initiated any compromise talk with the respondent. Even the said averment was not proved by examining the officer who had sworn to the affidavit. The court also found that the explanation of the appellants for the delay is neither reasonable nor

satisfactory. From the facts and circumstances stated in detail in the preceding paragraphs, I have no doubt in my mind that right from the beginning the revision petitioners are not vigilant in prosecuting this matter. It is seen that at every stage there is unreasonable delay which was not explained nor attempted to be explained. The Appellate Court has taken into consideration all relevant circumstances and held that there is no reason for condoning the delay. I find no reason to interfere with the findings entered by the Appellate Court and, therefore, this Civil Revision Petition did not merit consideration and therefore dismissed. There is no order as to costs.

HARUN-UL-RASHID,
JUDGE.

mt/

I.A. 856 OF 2003
IN
C.R.P. 897 OF 2002
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DISMISSED.

22.8.2007. ID/- HARUN-UL-RASHID,
JUDGE

HARUN-UL-RASHID, J.

C.R.P. No.897 OF 2002

ORDER

22.8.2007